

Owens, James T.

From: David Wiener (b) (6)
Sent: Friday, May 30, 2014 4:09 PM
To: Owens, James T.
Subject: EPAC Site - 730 North Main St., Waterbury CT
Attachments: EPA - RCRA - Notice of Liability to Dave Holand - 6-5-03.tif; Great Brook - Notice of Being Named as a PRP by EPA - 6-05.tif

James,

As I mentioned when we spoke earlier today this matter arose in the aftermath of a fire at the property in 2002. After the debris from the fire was cleared, transformers with PCB laden oil that were left behind by the sellers were discovered. As you can see by the attached letters the EPA notified both the owner and the seller of their potential liabilities for the clean-up. Since then the buyer, Waterbury Realty, LLC, oversaw and paid for the RCRA remediation on its own because the seller was unresponsive and uncooperative. The TOSCA remediation has been on hold pending the outcome of a lawsuit between the buyer and seller (Great Brook Realty, LLC) although we have been keeping Ms. Kim Tisa apprised of the status of the site.

I am writing on behalf of the buyer at this time to advise you of the status of the lawsuit and the seller. Great Brook Realty was formed as a special purpose holding company whose sole asset was the property at 730 North Main Street, Waterbury, CT. When Great Brook sold the property to Waterbury Realty they transferred title and took back a mortgage. The mortgage is their only asset now and is part of the basis of the lawsuit. We are expecting to go to trial in the next few months to resolve Great Brook's remediation obligations and Waterbury Realty's obligation on the mortgage.

Great Brook could receive a substantial one-time cash payout on the mortgage at the end of the trial. We feel you should be aware of this because the shareholders could decide to distribute the cash to themselves and liquidate the company without fulfilling any of their obligations as a named PRP by the EPA in this matter. We would therefore like to discuss with the EPA what notification and/or motion might be appropriate to ensure that the work gets done and each party pays its fair share of the costs.

Please feel free to either call me directly on my cell phone at (b) (6) or e-mail me back with any questions or comments you may have once you have reviewed the attached. If necessary I would be willing to come to Boston to meet with you.

Thank you for calling me back today in spite of being out of the office. I look forward to hearing back from you soon.

David Wiener





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
1 CONGRESS STREET, SUITE 1100
BOSTON, MASSACHUSETTS 02114-2023

URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
CERTIFIED MAIL: RETURN RECEIPT REQUESTED

June 5, 2003

Waterbury Realty, LLC
c/o David Holand, Registered Agent
730 North Main Street
Waterbury, CT 06704

Re: **NOTICE OF POTENTIAL LIABILITY AND INVITATION TO PERFORM OR
FINANCE PROPOSED CLEANUP ACTIVITIES**
EPAC Superfund Site, Waterbury, New Haven County, Connecticut

Dear Mr. Holand:

This letter serves to notify Waterbury Realty, LLC of potential liability regarding the EPAC Site ("Site"), Waterbury, Connecticut, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9607(a). This letter also notifies you of forthcoming removal activities at the Site which Waterbury Realty, LLC is invited to perform or finance and which it may be ordered to perform at a later date.

NOTICE OF POTENTIAL LIABILITY

The United States Environmental Protection Agency ("EPA") has documented the release or threatened release of hazardous substances or pollutants or contaminants at the Site, which is located at 730 North Main Street, Waterbury, Connecticut (parcel number 0237-0166-0024), Latitude 41° 33' 44" North, Longitude 73° 01' 54" West. The Site is bounded by commercial properties to the north, residential properties and the Naugatuck River to the east, residential properties to the south, and residential neighborhood and Martin Luther King Jr. Park to the west.

Hazardous substances involved in the release or threat of release at the Site include, but are not limited to, friable asbestos, PCB-contaminated oils, and containers of hazardous waste. EPA has spent or is considering spending public funds on actions to investigate and control such releases or threatened releases at the Site. Unless a potentially responsible party ("PRP") or parties commit to properly performing or financing such actions, EPA may perform these actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.

Toll Free • 1-888-672-7341

Internet Address (URL) • <http://www.epa.gov/region1>

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Under Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6973, and other laws, liable parties may be obligated to implement response actions deemed necessary by EPA to protect public health, welfare, or the environment and may be liable for all costs incurred by the Government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to, expenditures for investigations, planning, response, oversight, and enforcement activities.

Responsible parties under CERCLA include current and former owners and operators of the Site, persons who arranged for disposal or treatment of hazardous substances found at the Site (often called "generators"), and persons who accepted hazardous substances for transport to the Site (often called "transporters").

EPA has evaluated evidence gathered during investigations of the Site. Based on this evidence, EPA has information indicating that you are a potentially responsible party under Section 107(a) of CERCLA with respect to the Site. Specifically, EPA has reason to believe that Waterbury Realty, LLC is the owner of the Site. By this letter, EPA notifies Waterbury Realty, LLC of your potential liability and urges you to voluntarily perform or finance those response activities that EPA determines are necessary at the Site.

OUTLINE OF SITE RESPONSE ACTIVITIES

In accordance with CERCLA and other authorities, EPA has undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions have included conducting site assessments and sampling as well as other investigations which have revealed the presence of hazardous substances at the Site.

Due to the presence of hazardous substances at the Site, and in light of other conditions, EPA has determined that there may be an imminent and substantial endangerment to public health, welfare, or the environment. In response, EPA is planning to conduct the following immediate removal activities at the Site: 1) remove friable asbestos from the boiler and that which is intermingled with debris; 2) remove PCB oils from transformers, capacitors, and drums; 3) analysis of the contents of deteriorating drums and containers intermingled with debris; and, 4) overpack, stage, and dispose of the asbestos, PCB oils, contaminated soils and containers at an EPA-approved disposal facility. EPA anticipates the removal activities will take 4 months to complete.

INVITATION TO PERFORM SITE RESPONSE ACTIVITIES

Before EPA spends additional public funds to undertake a removal action at the Site, EPA urges Waterbury Realty, LLC to voluntarily perform or finance the removal activities outlined above.

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Any such work performed by Waterbury Realty, LLC in its capacity as a PRP must be conducted pursuant to an administrative order and an EPA-approved workplan as authorized by Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). Prior to final issuance of such an order, a draft order will be sent to you or your representative for review and comment. Enclosed herewith is a copy of a summary of a generic Scope of Work.

This document should provide Waterbury Realty, LLC with an understanding of the types of plans and activities typically required by such an order.

Be advised that even if Waterbury Realty, LLC does not indicate a willingness to perform or finance necessary response actions, EPA may order Waterbury Realty, LLC to undertake such actions under Section 106 of CERCLA, 42 U.S.C. § 9606. Failure to comply with a Section 106(a) administrative order may result in a fine of up to \$27,500 per day under Section 106(b) or imposition of treble damages under Section 107(c)(3) of CERCLA. Further, Waterbury Realty, LLC may be held liable under Section 107(a) for the cost of the response activities EPA performs at the Site and for any damages to natural resources. In addition, by virtue of Section 113 of CERCLA, 42 U.S.C. § 9613, other PRPs who agree to perform the necessary response action may seek contribution protection.

PRP RESPONSE AND EPA CONTACT

You should contact EPA within ten (10) business days after receipt of this letter to indicate your willingness to perform or finance the response activities outlined above. If EPA does not receive a response within that time, EPA will assume that you do not wish to negotiate a resolution of your liabilities in connection with the response and that you have declined any involvement in performing response activities. Be advised, however, that liability under CERCLA is joint and several; therefore, each PRP is potentially liable for undertaking all response actions or reimbursing the Government for the entire amount of its response costs.

Please provide the name, address, and telephone number of a designated contact for future communications. Your written response, including any technical comments or questions concerning the proposed response activities, should be directed to the EPA On-Scene Coordinator (OSC) for the Site:

Leslie Sims
U.S. Environmental Protection Agency
Environmental Planning and Response Branch
1 Congress Street Suite 1100, Mail Code HBR
Boston, MA 02114-2023
(617) 918-1235

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Legal questions and all communications from counsel should be directed to:

Cynthia A. Lewis
U.S. Environmental Protection Agency
Office of Environmental Stewardship
1 Congress Street Suite 1100, Mail Code SES
Boston, Massachusetts 02203
(617) 918-1889

DECISION NOT TO USE SPECIAL NOTICE

Under Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and PRPs to conduct or finance response activities. The use of special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRPs are conducted.

Due to the exigencies posed by conditions present at the Site, removal activities must be conducted as expeditiously as possible. EPA has therefore decided not to invoke the Section 122(e) special notice procedures with respect to CERCLA removal actions at this Site. Nonetheless, EPA is willing to discuss settlement opportunities without invoking a moratorium, but will initiate the response action as planned if such discussions do not lead to settlement expeditiously.

ADMINISTRATIVE RECORD

Pursuant to Section 113(k) of CERCLA, 42 U.S.C. § 9613(k), EPA will establish an administrative record containing documents that form the basis of EPA's decision on the selection of response actions for the Site. The administrative record files may be inspected and comments may be submitted by contacting the OSC for the Site.

The Administrative Record Files with corresponding index should be available for inspection at a repository near the Site within sixty (60) days of initiation of on-site removal activities.

SITE ACTIVITY OUTSIDE EPA ACTIONS

If Waterbury Realty, LLC is already involved in discussions with state or other local authorities or involved in a lawsuit regarding this Site, it should continue such activities as it sees fit. This letter is not intended to advise or direct Waterbury Realty, LLC to restrict or discontinue any such activities. However, you are advised to report the status of any such discussions or actions in your response to this letter and to provide a copy of your response to any other parties involved in those discussions or actions.

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CONSENT TO ACCESS

EPA requests access to your property, the Site, to perform or oversee the response actions discussed above. This request is enclosed.

PURPOSE AND USE OF THIS NOTICE LETTER

The factual and legal discussions contained in this letter are intended solely to provide notice and information. Such discussions are not intended to be, and cannot be, relied upon as EPA's final position on any matter set forth herein.

Due to the seriousness of the environmental and legal problems posed by conditions at the Site, EPA urges that Waterbury Realty, LLC give immediate attention and provide a prompt response to this letter.

By copy of this letter EPA is notifying the State of Connecticut and the Natural Resources Trustees of EPA's intent to perform, or to enter into negotiations for the performance or financing of, response actions at the Site.

Thank you for your attention to this matter.

Sincerely,



Arthur V. Johnson, III, Chief
Emergency Planning and Response Branch

Enclosure (9)

cc: Leslie Sims, EPA On-Scene Coordinator - OSRR/EPRB
Sharon Fennelly, EPA Enforcement Coordinator - OSRR
Holly Inglis, EPA Administrative Records Coordinator - OSRR
Cynthia A. Lewis, EPA Removal Counsel - OES
Cheryl O'Halloran, EPA CERCLIS Coordinator - OSRR
William Hegener, Director, Oil and Chemical Spill Response Division
Rosanne Stovola, Site Coordinator, Connecticut Department of Environmental Protection
Andrew Radandt, Environmental Officer, U.S. Department of the Interior
Ken Finkelstein, National Oceanic and Atmospheric Administration
John Carlson, Contracts Management - HBS